

1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 08-13555-jmp

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5 In the Matter of:

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7 LEHMAN BROTHERS HOLDINGS, INC.,

8

9 Debtors.

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13 U.S. Bankruptcy Court

14 One Bowling Green

15 New York, New York

16

17 November 20, 2012

18 10:02 AM

19

20 B E F O R E :

21 HON JAMES M. PECK

22 U.S. BANKRUPTCY JUDGE

23

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1 Hearing re: Doc# 30145 Notice of Adjournment of
2 Hearing/Notice of Further Adjournment of Debtors Two Hundred
3 Sixty-Eighth Omnibus Objection to Claims (Duplicative
4 Claims)

5
6 Hearing re: Doc# 32032 Notice of Adjournment of Hearing of
7 Merits Hearing with Respect to Proofs of Claim 55396, 41225,
8 and 60352

9
10 Hearing re: Doc# 29954 Third Notice of Adjournment of
11 Hearing of Two Hundred Forty-First Omnibus Objection to
12 Claims (No Liability Claims) Solely as to Certain Claims

13
14 Hearing re: Doc# 31315 Motion for Omnibus Objection to
15 Claim(s): Three Hundred Fifty-Ninth Omnibus Objection to
16 Claims (Amended and Superseded Claims)

17
18 Hearing re: Doc# 31316 Motion for Omnibus Objection to
19 Claim(s): Three Hundred Sixtieth Omnibus Objection to
20 Claims (Valued Derivative Claims)

21
22 Hearing re: Doc# 31317 Motion for Omnibus Objection to
23 Claim(s): Three Hundred-Sixty-First Omnibus Objection to
24 Claims (No Guarantee Claims)

25

1 Hearing re: Doc# 31324 Motion for Omnibus Objection to
2 Claim(s): Three Hundred Sixty-Second Omnibus Objection to
3 Claims (Duplicative of Indenture Trustee Claims)
4

5 Hearing re: Doc# 31325 Motion for Omnibus Objection to
6 Claim(s): Three Hundred Sixty-Third Omnibus Objection to
7 Claims (Reduce and Allow Claims)
8

9 Hearing re: Doc# 31326 Motion for Omnibus Objection to
10 Claim(s): Three Hundred Sixty-Fourth Omnibus Objection to
11 Claims (No Liability Claims)
12

13 Hearing re: Doc# 31589 Notice of Adjournment of Hearing of
14 Three Hundred Forty-Sixth Omnibus Objection to Claims
15 (Securities Claims) Solely as to Certain Claims
16

17 Hearing re: Doc# 29952 Notice of Adjournment of Hearing of
18 One Hundred Fifty-First Omnibus Objection to Claims (No
19 Liability Claims) Solely as to Certain Claim
20

21 Hearing re: Doc# 32001 Notice of Adjournment of Hearing of
22 the Ninety-Second Omnibus Objection to Claims (No Blocking
23 Number LPS Claims) and Supplement to the Ninety-Second
24 Omnibus Objection to Claims Solely as to Certain Claims
25

1 Hearing re: Doc# 32178 Notice of Agenda of Matters
2 Scheduled for Claims Hearing on November 20, 2012 at 10:00
3 a.m.
4

5 Hearing re: Doc# 31643 Notice of Adjournment of Hearing of
6 Three Hundred Forty-Eighth Omnibus Objection to Certain
7 Claims (Valued Derivative Claims) Solely as to Certain
8 Claims
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10 Hearing re: Doc# 31654 Notice of Adjournment of Hearing of
11 the Three Hundred Forty-Third Omnibus Objection to Claims
12 (No Liability Claims) Solely as to Certain Claims
13

14 Hearing re: Doc# 31655 Notice of Adjournment of Hearing of
15 Three Hundred Forty-Ninth Omnibus Objection to Claims (No
16 Liability Claims)
17

18 Hearing re: Doc# 31694 Notice of Adjournment of Hearing of
19 One Hundred Thirty-Eighth Omnibus Objection to Claims (No
20 Liability Derivatives Claims) Solely as to Certain Claims
21

22 Hearing re: Doc# 31695 Notice of Adjournment of Hearing of
23 Three Hundred Seventeenth Omnibus Objection to Claims (No
24 Liability LBL Employee Claims) Solely as to Certain Claims
25

1 Hearing re: Doc# 29894 Notice of Hearing/Notice of ADR
2 Procedures and Scheduling of Claims Objection Hearing with
3 Respect to Debtors Objection to Proofs of Claim No. 42907
4 and 42908 (related document(s) 28430)

5

6 Hearing re: Doc# 16079 Motion for Omnibus Objection to
7 Claim(s)/Debtors' One Hundred Twenty-Fifth Omnibus Objection
8 to Claims (Insufficient Documentation)

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10 Hearing re: Doc# 20087 Motion for Objection to Claim(s)
11 Number: 66099/Debtors' Objection to Proof of Claim No.
12 66099

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14 Hearing re: Doc# 14492 Motion for Omnibus Objection to
15 Claim(s): Debtors' Ninety-Seventh Omnibus Objection to
16 Claims (Insufficient Documentation)

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25 Transcribed by: Nicole Yawn

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P R O C E E D I N G S

THE COURT: Be seated. Good morning.

MR. BERNSTEIN: Good morning, Your Honor. Mark
Bernstein, from Weil, Gotshal, on behalf of Lehman Brothers
Holdings, Inc. and its affiliated debtors.

We have a relatively short agenda for you this
morning, one uncontested item and then, two contested items.

The -- the first uncontested item is the three
hundred and sixty-second omnibus objection to claims. This
seeks to disallow claims that were filed that are
duplicative of other claims filed by indentured trustees.
We made a couple changes to this order following
conversations with certain creditors.

First, the -- with respect to claims of King
Street, we've modified the order to include language that
we've included in other similar orders, which provides that
any documentation that's -- was filed along with the King
Street claims will be deemed to be included on the claims of
the indentured trustee. So, to the extent there was any
difference of important documentation, and further, to the
extent that the claim of the indentured trustee is ever
disallowed, the King Street claim will automatically be
revived.

So we have included that language in the order,
and then, in conversations with Vanguard regarding their

1 claims included on this objection, they -- their claims are
2 based on the U.K. capital funding notes, which -- for which
3 there was a guarantee issued by LBHI that -- that, in our
4 view, is -- is subordinated -- and ties (ph) it into a
5 subordinated claim. We have included language in the order
6 which Vanguard has agreed to, which provides that, instead
7 of disallowing these claims, the claims will be classified
8 either in class 11 or class 12 of the plan. Class 11 being
9 the 510(b) class, and class 12 being the equity class.

10 We've reserved in the order the right of either
11 party to assert which one of those two classes the claims
12 belong in, to the extent that the -- there ever -- ever is a
13 distribution that should ever get down to either of those
14 classes.

15 THE COURT: There is no foreseeable economic
16 circumstance that I'm aware of that could put those claims
17 on the money.

18 MR. BERNSTEIN: That's -- that's correct, and we
19 -- we do not believe so, either. Therefore, we didn't
20 believe it was necessary to argue about whether those claims
21 should be in class 11 or 12, so the order reserves
22 everyone's rights on that issue, but provides that the
23 claims shall not be in class 1 through 10(c) with -- and
24 with that language, I have a blackline of the order I can
25 hand up to you with that language. Vanguard and King Street

1 have agreed to this -- have this order entered on an
2 uncontested basis.

3 THE COURT: Okay. You can hand it. You can hand
4 that up.

5 MR. BERNSTEIN: One -- one more thing I just point
6 out. Two of Vanguard's claims that were similar to the ones
7 included on this order had previously been disallowed and
8 expunged as being duplicative of the indentured trustee.

9 As part of this resolution of this issue, we've
10 included a -- a paragraph in the order that revives those
11 claims for the purpose of this order, but subordinates them
12 in the same way as the rest of their claims. So, from the
13 debtors' perspective, those claims come back to be put on
14 the register, but there is no economic injuries (ph), as
15 they're unlikely to ever receive a distribution.

16 THE COURT: I won't even inquire as to why that
17 was an important condition, but I accept it.

18 MR. BERNSTEIN: I -- okay. Let me hand it up.

19 THE COURT: Thanks.

20 Okay.

21 MR. BERNSTEIN: Thank you, Your Honor.

22 So, with that, as -- we request Your Honor enter
23 that order on an uncontested basis.

24 THE COURT: Fine. It will be entered on an
25 uncontested basis.

1 MR. BERNSTEIN: Thank you, Your Honor.

2 The first contested item on the agenda is a merits
3 hearing with respect to certain groups of claim that are
4 based on structured securities. In accordance with the
5 structured securities valuation procedures order which this
6 Court entered in the summer of 2011, the debtors provided
7 the methodologies that they would use to value the more than
8 6,000 structured securities that were included on more than
9 20,000 proofs of claim. In accordance with those -- that
10 order and with those methodologies, the debtors calculated
11 the amounts due on these -- the claims subject to this
12 order, the three claims subject to this merits hearing and
13 sent notices of those proposed allowed amounts to these
14 individual claimants.

15 These three claimant -- these three -- four
16 claimants on three claims responded to the debtors' proposed
17 allowed amount and said that they disputed the amount. They
18 -- they merely said we dispute the amount. We disagree with
19 it. They didn't provide any basis for their dispute or an
20 alternative valuation. They just sent one-line or two-line
21 letters to the debtor saying they dispute the amount.

22 THE COURT: Just as a point of information, I
23 looked at the letters and communications that came in from
24 these creditors. What wasn't clear to me is whether these
25 are the only holders of these structured securities that

1 have objected to the methodology or whether this is simply a
2 group that you have selected for today that is simply
3 unavailable, hasn't been communicative and is anticipated to
4 be a group that will not appear to be heard, and so, this is
5 low-hanging fruit.

6 MR. BERNSTEIN: It -- it -- it's the latter.
7 There are a number of creditors who are still disputing
8 valuations, although I think initially there were about 3 to
9 400 disputes filed or sent to the debtors. We -- we have
10 whittled that number down, mostly through convincing them
11 that -- or explaining our methodologies to them, and -- and
12 -- and we're down to a much smaller number. I'm not exactly
13 sure what the number is, but there is -- there are a handful
14 of creditors that are -- they're still having valuation
15 disputes, but, for the most part, we are in communication,
16 and we're in negotiations, and we're in discussions with
17 those parties.

18 These -- these parties have not responded to any
19 of our communications. We have -- we've tried to resolve
20 the issue with them, and we've just been unable to get any
21 feedback from them or have any other way to move this
22 forward, other than -- than bringing them to -- to
23 Your Honor.

24 THE COURT: So this is, in effect, a merits
25 hearing by default?

1 MR. BERNSTEIN: Unless any of them -- I don't see
2 anyone in the courtroom today, but unless they happen to be
3 on the phone.

4 THE COURT: We'll find out.

5 MR. BERNSTEIN: We'll -- we'll find out. So one
6 -- one correction I would like to make -- and -- and this is
7 a material change. There was an error in the -- in the
8 numbers that were included on the exhibit to our reply to
9 the -- and the -- the correct numbers, which I'll -- which
10 I'll read to you in a minute, actually display that the
11 proposed allowed amount which we're seeking to have allowed
12 for these particular claims is much, much closer to the
13 asserted claim amount than what was actually indicated on
14 our initial table.

15 So, for claim 55396, the filed amount of the claim
16 for the ISN that ends in 3427 was \$4,126,811. Our -- our
17 reply had indicated that the proposed allowed amount was
18 \$34,058, but, in fact, our proposed allowed amount for that
19 ISN -- that portion of the ISN that's included on that claim
20 is \$4,123,921.31.

21 So the difference between their filed amount and
22 our proposed amount is about \$3,000, and then, for the -- on
23 that same proof of claim 55396, there is another ISN that
24 ends in the number 5807, and the filed amount for that claim
25 we initially listed at 4 -- around \$4.8 million, but, in

1 actuality, it was \$560,940, and our proposed allowed amount
2 for that portion of that ISN on that claim is \$560,546.78.
3 So we have a difference of about -- about \$400. So the --
4 the -- the -- the proposed allowed amounts that we're
5 seeking to have allowed for these claims based on our
6 methodologies -- for those two securities and also the other
7 two, which our numbers were correct for, are very, very
8 close and, in one case, actually more than what the party
9 actually filed for.

10 So we're not seeking to disallow these claims.
11 We're seeking to have them allowed in the amounts calculated
12 pursuant to the methodologies which thousands of other
13 creditors and sophisticated parties have agreed are
14 reasonable methods of valuing the claims.

15 So, because we've been unable to contact these
16 parties, we've -- we've -- we've -- were -- they've been
17 responsive to us, we've -- we've notified them of the merits
18 hearing, and, if -- if -- if anyone is on the phone or here
19 today, we're happy to continue to talk to them about these
20 amounts, but, if they're not here, then we're -- we don't
21 have any way to resolve this with these parties, other than
22 to ask Your Honor to enter an order allowing these claims in
23 our proposed amounts.

24 THE COURT: Well, the affected claims were filed
25 by Peter Weiss/Renate Anna, Aggeliki Bartzi and Christos

1 Konstas, and Fundacion Isla Couto, and, for transcription
2 purposes, I'm going to ask that whoever transcribes this
3 record take a close look at the agenda to get the names
4 spelled correctly.

5 Are any of those individuals or institutions
6 present in court or participating by telephone this morning?

7 There is no response.

8 Can you detail for me the efforts that were
9 undertaken by the plan administrator to provide actual
10 notice to these claimants of today's hearing?

11 MR. BERNSTEIN: Certainly, Your Honor.

12 The -- the plan administrator -- in accordance
13 with the claims resolution procedures order this Court
14 entered, the -- it -- it -- it requires 45 days notice be
15 sent to each claimant of any merits hearing that will --
16 that will occur with respect to their claims. So the
17 debtors used the form that was attached to the claims
18 resolution procedures order for notice of merits hearing.

19 This was served on each of the claimants on
20 September 13th, 2012 at the addresses that they have
21 provided to us on their proofs of claim or -- and/or in
22 their responses that they provided -- provided to their
23 actual valuation, and Epiq has filed a declaration -- or an
24 affidavit of service with respect to the service of these
25 notice of -- of the scheduling of the merits hearing on each

1 of these claimants.

2 We did not receive any response from any of the
3 claimants at any time in connection with the notice of the
4 merits hearing, and the notice -- that was -- that's the
5 notice with respect to the merits hearing. Prior -- upon
6 receipt of their dispute of the valuation procedures, we
7 also sent letters, emails, or phone calls, to the extent we
8 had any of those means of communications to each of these
9 parties seeking to have -- seeking to discuss the dispute
10 with them about their valuation, and all of those -- none of
11 those proved fruitful, either.

12 THE COURT: Were any of these communications
13 returned as undeliverable?

14 MR. BERNSTEIN: No, not -- not that I'm aware of.

15 THE COURT: All right. Thank you.

16 MR. BERNSTEIN: So, with that presentation, we
17 would ask Your Honor to allow these four claims in the
18 proposed allowed amounts as determined pursuant to the
19 structured securities valuation methodologies.

20 THE COURT: In light of the fact that the
21 differences in the allowed amount of the claims in most
22 instances represent marginal differences and, in one
23 instance, apparently, an actual increase in the claim amount
24 and, perhaps most importantly, in light of the fact that the
25 affected claimants have not participated in any manner in

1 this process and have not responded to requests by the plan
2 administrator to engage in a consensual process and in light
3 of the fact that these claimants are not present in court
4 today to be heard, either in person or by telephone, the
5 debtors are prevailing in this first merits hearing with
6 respect to these proofs of claim.

7 MR. BERNSTEIN: Thank you, Your Honor.

8 I will turn the podium over to my colleague, Eric
9 Kasenetz, to handle the remaining contested item on the
10 agenda.

11 THE COURT: All right. Thank you.

12 I assume you'll be submitting an order with
13 respect to the merits hearing?

14 MR. BERNSTEIN: Yes, we will.

15 THE COURT: Fine.

16 MR. KASENETZ: Good morning, Your Honor. Eric
17 Kasenetz, of Weil, Gotshal & Manges, on behalf of Lehman
18 Brothers Holdings, Incorporated and its affiliated debtors.
19 Your Honor, I'll be handling the second contested agenda
20 item, which relates to the ninety-second omnibus objection
21 to claims and the supplement to the ninety-second omnibus
22 objection to claims.

23 Your Honor, there are two sets of claims on this
24 agenda item, and both sets relate to blocking number issues
25 and the bar date order. I propose to address both sets of

1 claims at the same time, as there is significant overlap in
2 some of the issues.

3 The first set of claims -- we'll call these the
4 no-blocking number claims. Those are covered by the ninety-
5 second omnibus objection. The second set of claims
6 -- we'll call these the duplicative LPS claims -- are
7 covered by the supplement to the ninety-second omnibus
8 objection to claims.

9 The ninety-second omnibus objection seeks to
10 disallow and expunge claims based on Lehman program
11 securities for failure to obtain blocking numbers in
12 violation of this Court's order -- bar date order. Excuse
13 me. Today we are proceeding as to the 14 claims set forth
14 on Exhibit A to the -- to the reply filed by the debtors at
15 ECF number 31752. The debtors' position is set forth at
16 length in the omnibus objection and the reply, so I will not
17 repeat all of those arguments, but instead, just touch on a
18 few key points that go directly to the issues with those
19 claims.

20 The claim filing procedures were specifically
21 formulated to address the inherent complexities in
22 reconciling claims based on thousands of securities for
23 which there was no indentured trustee to file claims on
24 behalf of tens of thousands of beneficial holders worldwide.
25 The claim filing procedures and, more specifically, the

1 blocking number requirement -- those were ordered by this
2 Court specifically to prevent invalid or potentially
3 duplicative distributions. Simply put, the holders of the
4 no-blocking number claims did not obtain blocking numbers
5 for their securities, even though the blocking number
6 requirement was a critical component of the bar date order.

7 Your Honor, at the November 30th, 2011 claims
8 hearing, this Court provided some guidance for the debtors
9 to deal with claims for which claimants did not obtain valid
10 blocking numbers. At that hearing, the Court encouraged the
11 claimants to work with the debtors and provide proof of
12 ownership of the securities, provide proof that no one else
13 obtained blocking numbers and filed for the same securities,
14 thereby reducing the risk of duplicative payments.
15 Moreover, this Court indicated that the burden is placed on
16 the claimants to demonstrate that the relevant securities
17 are not included on anyone else's claims.

18 Since that hearing, Your Honor, which was almost a
19 year ago at this point, the debtors have gone to great
20 lengths to work with all remaining claimants that failed to
21 provide blocking numbers. For many claims, the outcome has
22 been successful. Such claimants have provided the debtors
23 documents, certifications, and statements that have enabled
24 the debtors to get comfortable that the risk of duplicative
25 payments is minimal. As a result, those claims were

1 allowed.

2 With respect to these no-blocking number claims on
3 omni. nine-two, however, the debtors have tried to work with
4 the claimants to minimize the risk of duplicative payments.
5 To date, these no-blocking number claimants have been unable
6 or unwilling to mitigate that risk and provide the necessary
7 proof to the debtors.

8 THE COURT: Let me just clarify something for my
9 information. Based upon the papers that I reviewed in
10 preparation for this morning's hearing, I noted that a
11 particular lawyer located in Great Falls, Montana, Helge
12 Naber -- I'm not sure if I'm pronouncing the name correctly
13 -- appeared to represent all of the claimants that are the
14 subject of the pending relief request; is that right?

15 MR. KASENETZ: Well, it's -- it's right for the
16 most part, Your Honor, and it's -- and it's slightly unclear
17 the representation. Mr. Naber does represent the majority
18 of the claimants, but, based on a few filings of withdrawals
19 of notices of appearance, it appears that Mr. Naber does not
20 represent a handful of the claimants that are on this
21 objection.

22 THE COURT: All right, but let me find out if
23 Mr. Naber is on the line, because, when I looked at the
24 court call registration for the -- the hearing as of
25 yesterday, his name appeared.

1 Mr. Naber, are you on the line?

2 MR. NABER: I am, Your Honor. Good morning.

3 Good morning, everyone.

4 THE COURT: Good morning. Okay. I just wanted to
5 make sure that you were listening and participating.

6 All right.

7 MR. NABER: Thank you, Your Honor.

8 THE COURT: Why don't you proceed?

9 MR. KASENETZ: Thank you, Your Honor.

10 The -- the no-blocking number claimants -- they
11 argue that they are the true beneficial owners of the
12 securities, but, Your Honor, at the very least, they have
13 been unable or unwilling to show that their -- that their
14 positions are not subsumed in the validly filed claims of
15 what appear to be their banks or brokers that maintain the
16 securities on behalf of these beneficial holders. In fact,
17 the no-blocking number claimants admit that their claims are
18 likely competing with such banks' claims.

19 Because the no-blocking number claimants did not
20 comply with the bar date order, the no-blocking number
21 claimants have failed to mitigate the risks of receiving
22 duplicative payments, and the no-blocking number claimants
23 admit that their positions are likely covered by other
24 validly filed claims, the no-blocking number claims should
25 be disallowed and expunged in their entirety.

1 THE COURT: Are we going to stop at this point and
2 just deal with the ninety-second omnibus objection itself,
3 or are we going to also go into the supplement?

4 MR. KASENETZ: Your Honor, if -- if you would like
5 to stop here, we can do that.

6 THE COURT: I'm just trying to understand what the
7 most logical way to present this is from your perspective.

8 MR. KASENETZ: Sure. Well, I believe that some of
9 the issues that will be raised with respect to the
10 supplement to the ninety-second omnibus objection will --
11 will likely provide further insight into some of the issues
12 that might arise for the -- the omnibus -- the ninety-second
13 omnibus objection.

14 THE COURT: So it -- so it makes sense to deal
15 with it all at once?

16 MR. KASENETZ: I -- I think it does, Your Honor.

17 THE COURT: Let's do that.

18 MR. KASENETZ: Okay. Thank you.

19 As for the supplement to the ninety-second omnibus
20 objection to claims, the supplement seeks to disallow and
21 expunge the 41 claims set forth on Exhibit B to the reply
22 filed by the debtors at ECF number 31752. The supplement
23 seeks to disallow and expunge the duplicative LPS claims on
24 the basis that such claims, which appear to be filed by
25 beneficial holders of Lehman program securities, are

1 substantively duplicative of claims filed by what appear to
2 be banks on behalf of such beneficial holders.

3 By way of some background, these duplicative LPS
4 claims were originally on the ninety-second omnibus
5 objection to claims because such claims did not include
6 valid blocking numbers. However, after the filing of the
7 debtors' objection and long after the expiration of the
8 program securities bar date, the claimants provided the
9 debtors with blocking numbers for their claims. To date, it
10 is unclear to the debtors how these claimants obtained these
11 blocking numbers, as blocking numbers were only issued prior
12 to the bar date by the clearing agencies.

13 Regardless, all of these blocking numbers were
14 already included on the corresponding banks or the surviving
15 claims prior to the program securities bar date.

16 THE COURT: Just a question for clarification, and
17 this whole subject of blocking numbers is and has been a
18 somewhat confusing variant on proof of claim practice unique
19 to the Lehman case from the very outset. But are the
20 numbers that you have referred to that were obtained by
21 certain individual claimants after the bar date in order to
22 comply with the blocking number requirement the same or
23 different numbers from the numbers that were obtained by the
24 financial institutions that purported to act on their
25 behalf?

1 MR. KASENETZ: Your Honor, the latter -- what you
2 just said is -- is accurate in terms of the banks having the
3 blocking numbers. The banks filed their proofs of claim
4 with blocking numbers, and, based on the debtors' review of
5 the banks' claims, the banks are filing, not just on their
6 own behalf in their own proprietary ownership of securities,
7 but on behalf of thousands of beneficial holders. Those
8 blocking numbers that those banks included on their proofs
9 of claim are the exact same blocking numbers that were later
10 submitted by beneficial holders to what you were -- you were
11 describing as complying with the bar date order.

12 THE COURT: So is it your understanding that what
13 appears to have happened here is that individual claimants
14 appropriated for their own use blocking numbers that had
15 been obtained by financial institutions in a timely manner
16 prior to the bar date with respect to proofs of claim that
17 appear to have been filed on behalf of beneficial holders of
18 Lehman program securities for which those institutions acted
19 in a representative capacity?

20 MR. KASENETZ: That's right. We -- we don't
21 really know, Your Honor, how the beneficial holders obtained
22 the blocking numbers, but, according to the submissions by
23 the -- the beneficial holders in their response and in the
24 -- in their guarantee questionnaires, they submitted
25 purchase confirmations from the -- that were issued by the

1 very same banks that filed the proofs of claim with the
2 proper blocking numbers. So we do think that the beneficial
3 holders received the blocking numbers and submitted them,
4 even though the banks have the same blocking numbers and are
5 filing for those same beneficial holders.

6 THE COURT: Okay. I think I understood what you
7 said.

8 MR. KASENETZ: Would you like me to --

9 THE COURT: No, no, I --

10 MR. KASENETZ: -- rephrase it a different way?

11 THE COURT: I -- I think we should leave it alone
12 for now.

13 MR. KASENETZ: Okay. Thank you, Your Honor.

14 Your Honor, as supported by the declaration of
15 Holly Clack, who -- Ms. Clack is actually here today in this
16 courtroom -- the debtors undertook a detailed review of
17 these claims. They looked at the blocking numbers, the
18 ISNs, the notional (ph) amounts, and other relevant
19 information, and the debtors have concluded, as I've already
20 stated, that the securities claimed by the duplicative LPS
21 claims are included on the banks' claims and actually
22 claimed by those banks.

23 The banks' claims have already been allowed.
24 They've already started receiving distributions. As such,
25 if this Court were to allow the duplicative LPS claims, LBHI

1 would essentially be paying twice on the same obligations,
2 and the claimants would, in all likelihood, receive two
3 distributions, one distribution directly from LBHI and the
4 other distribution being passed through from the banks to
5 the beneficial holders. The debtors have asked the
6 duplicative LPS claimants to confirm whether they have
7 already received distributions from their banks, but, to
8 date, the -- the claimants have not provided an answer to
9 the debtors.

10 Your Honor, the duplicative LPS claimants -- they
11 -- they argue that their claims should be allowed in lieu of
12 the banks'. For several reasons, this -- this is simply not
13 the case.

14 First, throughout the duration of these cases, the
15 debtors have generally sought to allow the claims of the
16 banks or brokers because it is much easier to deal with a
17 few highly sophisticated banks rather than numerous
18 individual holders located all over the world. To date, the
19 debtors are not aware of any situation where a bank has
20 failed to pass through the distributions to the beneficial
21 holder. The debtors have no reason to believe that this
22 situation would be different here.

23 Second, the bar date order and the claims filing
24 procedures specifically contemplated and allowed banks and
25 brokers to file on behalf of the beneficial holders.

1 Because the parties did not know if claims would be filed
2 directly by the banks, brokers, or the individual beneficial
3 holders, creditors, back when these program securities were
4 -- were being negotiated and implemented -- they
5 specifically requested that claims not be disallowed based
6 on rule 3001(b), or, in other words, that the claims were
7 not filed by the proper party or authorized agent. It is
8 much too late to challenge this provision of the bar date
9 order.

10 And third, the debtors have not seen any evidence
11 to indicate that the banks are not validly filing for these
12 securities. The banks that filed the surviving claims are
13 the record-holders of the Lehman program securities on the
14 books and records of the clearing agencies. Otherwise,
15 those banks would not have been able to obtain blocking
16 numbers in the first place. On the other hand, the debtors
17 have no way of confirming the beneficial holders of these
18 securities.

19 Finally, Your Honor, if the duplicative LPS
20 claimants -- if they need more information from the banks,
21 they should just ask the banks directly. The debtors do not
22 understand why the duplicative LPS claimants cannot confirm
23 from their own banks whether the banks are filing on their
24 behalf.

25 As a workaround to all of this, the debtors have

1 suggested to the duplicative LPS claimants that they ask
2 their banks to transfer the portions of the surviving claims
3 to the customers. Many banks have done this for their
4 customers, including for portions of the same surviving
5 claims at issue, and, where the debtors have objected to the
6 beneficial holders' claims as duplicative of banks' claims
7 but the beneficial holder and the bank together have
8 preferred that the beneficial holders' claim survive, the
9 debtors have reversed and agreed to keep the beneficial
10 holders' claims, but, Your Honor, with all of these
11 suggestions, under no circumstances should the debtor be
12 required to pay twice, and, with this, the debtors' request
13 that the -- that the duplicative LPS claimants and the no-
14 blocking number claims -- that they both be expunged and
15 disallowed in their entirety.

16 THE COURT: Well, I appreciate your argument.

17 Let me inquire as to whether there are any
18 claimants affected by the ninety-second omnibus objection to
19 claims and the supplement to the ninety-second omnibus
20 objection to claims that are either present in court or on
21 the telephone, other than or in addition to Mr. Helge Naber.

22 There is no response, and the courtroom is rather
23 sparsely occupied today, and no one has come forward.

24 So, Mr. Naber, it appears that you are the only
25 individual acting on behalf of affected claimants.

1 MR. NABER: That is right, Your Honor.

2 THE COURT: This is -- this is your opportunity to
3 respond to the argument that has been made, but I do have
4 one particular question that I'd like you to focus on.

5 MR. NABER: Yes.

6 THE COURT: As I understand the situation, claims
7 were filed by a German affiliate of Citi Bank and either
8 Dresdner Bank or Commerzbank as successor in interest to
9 Dresdner Bank and that the institutions that we're talking
10 about for purposes of your client base, are major financial
11 institutions. They're probably among the largest financial
12 institutions on the planet. That being said, why is it not
13 entirely appropriate for your client constituency to look to
14 these financial institutions for pass-through payment?

15 MR. NABER: I -- I will answer that (indiscernible
16 - 31:12), Your Honor. Thank you, and I wanted to explain a
17 little or explore (ph) a little about how these blocking
18 numbers came about.

19 THE COURT: They --

20 MR. NABER: The blocking numbers came about
21 (indiscernible - 31:22) so they were, in our view, three
22 steps to be made. There was a -- a group (ph) of
23 (indiscernible - 31:33). There was (indiscernible - 31:34),
24 and there was a --

25 THE COURT: Mr. Naber, I'm going to have to break

1 in. One of the disadvantages in appearing by telephone is
2 that you're unable to tell how hard it is for us to hear
3 you.

4 MR. NABER: Oh.

5 THE COURT: And we are also making a record of
6 everything that people are saying here, and I doubt very
7 much if anything that you've just said made it onto our
8 transcript. You're going to have to --

9 MR. NABER: (Indiscernible - 31:54.)

10 THE COURT: You're going to have to speak up.

11 MR. NABER: I will. Yes, I will speak up, and I
12 will slow down. Thank you.

13 With respect to the blocking numbers that the
14 claimants have provided, we're (ph) looking at the very
15 first (ph) (indiscernible - 32:09) from the banks prior to
16 the bar date order, but the -- there were numbers, for
17 instance, being received, and the bank also didn't provide
18 me with documentation showing that my clients, in fact,
19 wanted the bank to represent and bring those claims on their
20 behalf, rather than me, since I (indiscernible - 32:34) with
21 attorney.

22 So, as admitted (ph), the last set (ph), which was
23 the program securities proof of claims without the blocking
24 numbers and then, when the objection came about, I went to
25 the clients and asked them to verify with the bank whether

1 (indiscernible - 32:42), which have branches all over the
2 country there if those claims are indeed the same claims,
3 and so, those clients (indiscernible - 32:48) banks
4 confirmed that they are, I withdrew those claims, and, for
5 the banks that this is the blocking number, it was -- it was
6 claimed under by the bank, I provided that number to the
7 debtor saying that this is, you know, (indiscernible -
8 33:04) the same and that the debtor should verify which one
9 of the two is available (ph) since I also have powers of
10 attorney in the bank where (indiscernible - 33:12) the
11 summary (ph) number on their proof of claim.

12 So -- and I appreciate the debtors' patience with
13 us keeping (ph) this all together, but there is no -- no
14 (indiscernible - 33:22) the blocking numbers is was not
15 possible to provide them on time. So (indiscernible -
16 33:28) as I figured in consideration and in visiting with
17 the debtors about this issue, I provide also (ph) them
18 (indiscernible - 33:36) check on their end.

19 So the no-blocking numbers claims remain without
20 blocking numbers, because we were unable to obtain those
21 from the bank. You know, it is by way of assignment (ph)
22 after (indiscernible - 33:47) regard for -- in way of an
23 agreement, you know, (indiscernible - 33:53) the other.

24 (Indiscernible - 33:56) saying that it looks to me
25 that this is more an individual administration issue than it

1 is a substantive issue. All of those things (indiscernible
2 - 34:07) bank thinks that (indiscernible - 34:07) for my
3 clients. It just seems to be a matter of administrative
4 (indiscernible - 34:15), which (indiscernible - 34:17).

5 So I asked the debtors again to verify with the
6 banks who are the only ones that know who the individual
7 claimants are that comprise their -- their internal
8 (indiscernible - 34:26), if you will, and the debtor, you
9 know, (indiscernible - 34:29) and trying to do this, I have
10 seen a (indiscernible - 34:34) that will show me
11 (indiscernible - 34:36) those things go, and that's why
12 we're still here.

13 THE COURT: I must admit I had some difficulty in
14 following what you have just said, in part because the
15 volume is not high enough for me to hear every word you've
16 said, and you've also spoken rather briskly, and we're
17 talking about some issues that are necessarily complicated
18 to understand. So I just want you to know that you've lost
19 me a little bit.

20 One piece that I think I picked up is that, as to
21 the duplicative portion of the claims, you indicated that
22 this is more procedural than substantive, and I'd like you
23 to comment further on that. To what extent is this a real
24 issue?

25 I think you have to recognize that, from the

1 debtors' perspective, it's a very significant issue, because
2 they can't be in a position in which anybody is receiving
3 what amounts to double payment, a payment once in their
4 individual capacity and a payment twice in a represented
5 capacity by virtue of a pass-through of distributions made
6 to a financial institution acting on their behalf. That's
7 the problem. What we need is the solution, and I don't
8 think I heard you give one.

9 MR. NABER: Okay. I -- I will address that,
10 Your Honor. Thank you.

11 I think the solution would be to suspend both
12 payments, the undistributed (ph) portion of the bank's
13 claims as well as the claims that -- for the claims that I
14 represent to further inquire with the banks who are the only
15 ones who will know what the individual claimants are or who
16 the individual claimants of their claims comprises of, and
17 until we have documentation from the banks where I can
18 actually say, yes, both claims are the same and the debtor
19 and the Court can do the same with the documentation, then I
20 will, of course, you know, visit (indiscernible - 37:00)
21 duplicative, but, for now, it seems everybody runs under the
22 presumption that there is -- that they're validly
23 representing the claims of the individual claimants that I
24 represent.

25 THE COURT: Well, here's -- here's one of the

1 problems I'm having with this. There -- and -- and just
2 bear with me as I try to understand this in -- in simple
3 terms.

4 There are certain claimants that had been holders
5 of Lehman program securities that never obtained blocking
6 numbers. There are other claimants that appear to have
7 obtained blocking numbers that are actually duplicative of
8 blocking numbers previously obtained by financial
9 institutions. In a sense, it doesn't matter whether we are
10 dealing with claimants that either had no blocking numbers
11 or somehow appropriated blocking numbers used by financial
12 institutions, because in either instance, there is the
13 unmitigated risk of double payment.

14 For that reason, it seems to me, particularly
15 since the burden has to be on the claimant and not on Lehman
16 and derivatively, Lehman's other creditors, that your
17 clients are the ones who should be dealing directly with the
18 financial institutions with whom they dealt in the past. As
19 I understand it, in each instance, the individuals, all of
20 whom appear to be citizens of the Republic of Germany,
21 purchased Lehman program securities from either Citi Bank or
22 Dresdner Bank, acting as an intermediary.

23 The financial intermediary needs to be responsible
24 here, and so, what I don't understand -- and it hearkens
25 back to my first question. What are you doing with respect,

1 not to this estate, but rather the apparently financially
2 responsible institutions that are the financial
3 intermediaries between your clients and the distributions?
4 Because the most logical answer here is that those
5 institutions, having obtained blocking numbers in the first
6 instance and having acted in their representative capacity,
7 not only with respect to your client group, but with respect
8 to a large group of holders of Lehman program securities in
9 Germany, presumably, but I don't know this, has received --
10 have received distributions from the Lehman estate, and they
11 either have or have not passed those distributions through
12 to the beneficiaries.

13 The working premise here is that major financial
14 institutions would have passed through those payments and
15 will not have misappropriated them. So that it is more
16 likely than not, it seems to me, unless you can show me
17 otherwise, that your clients received or should have
18 received payments from the institutions, and, if they didn't
19 receive those payments, that may be persuasive that they
20 actually don't have good claims at all. What's your answer
21 to that little speech?

22 MR. NABER: Well, Your Honor, I -- we contacted
23 all the banks that we -- you know, that (indiscernible -
24 41:12) and that -- that still are involved in this to obtain
25 the answer, is this true. We -- we represented the

1 (indiscernible - 41:20) in letters to each and every one of
2 them, to each and every one of those claimants and said did
3 you guys pay this claim and pay the guys for this
4 distribution (ph) or whatever distribution the banks have
5 participated in, yes or no, and for those I have a response
6 by the banks saying yes, we did, I withdrew the claim.

7 So, you know, I'm working with those banks to the
8 best of my ability just trying to look for an answer. I'm
9 king of at the end of my rope.

10 THE COURT: Well, I'd like to hear from Ms. Clack,
11 who's in the courtroom, to understand a little bit more
12 about the prejudice to the Lehman estate associated with
13 having the claimants that are the subject of the ninety-
14 second omnibus objection and the supplemental -- or the
15 supplement to the ninety-second omnibus objection remain as
16 active claimants for some period of time while there is an
17 ongoing effort to reconcile these apparent differences.

18 I don't think we're talking about significant
19 dollar amounts, but I think we're probably talking about
20 significant administrative burden.

21 MR. KASENETZ: Your Honor, may I request to have
22 Holly -- Ms. Clack's declaration entered into evidence at
23 this time?

24 THE COURT: Is there any objection to my receipt
25 of the Holly Clack declaration as the equivalent of her

1 direct testimony? She's certainly subject to cross-
2 examination and questions that the Court may have.

3 MR. NABER: I have no objections, Your Honor.
4 Thank you.

5 THE COURT: Okay. It's admitted.
6 (Debtors' Exhibit was admitted)

7 MR. KASENETZ: Thank you.

8 MS. CLACK: Good morning, Your Honor. Holly
9 Clack, from Alvarez and Marsal.

10 THE COURT: What's the prejudice to the debtors if
11 these claimants remain outstanding for a while longer?

12 MS. CLACK: Well, Your Honor, we have already
13 incurred significant expense trying to work with Mr. Naber
14 with regard to these claims, and I think at one point it was
15 -- it's -- it's about 70 claimants, and this has been going
16 on for approximately a yearn-and-a-half. So the longer that
17 these remain outstanding and the more time we spend trying
18 to work with him on these, the more expense is incurred,
19 and, as we tried to work with him and there was no
20 significant response, no -- no substantial support or
21 documentation for what he is trying to claim, i.e., that
22 these claimants really stand on their own and are not
23 potentially duplicative of the banks' claims, which they do
24 appear to be, we decided to proceed in this -- in this
25 process.

1 THE COURT: Well, let me ask a very, very basic
2 question.

3 MS. CLACK: Uh-huh.

4 THE COURT: The goal here is to ensure that
5 individual claimants that have filed proofs of claim with
6 respect to a particular identified security do not at the
7 same time have derivative status under comparable claims
8 filed by institutions on their behalf that would result in
9 double payment; is that correct?

10 MS. CLACK: Uh-huh. That's correct.

11 THE COURT: How does one go about determining
12 whether an individual claimant's claim for a particular ISN
13 number happens to be included or not included under a
14 broader claim filed in a representative capacity by an
15 institution?

16 MS. CLACK: Uh-huh. Well, Your Honor, as you
17 stated, this is rather complicated. The -- the best
18 indication of whether or not a claim is duplicative is the
19 blocking number and whether the blocking number is
20 duplicative of that same blocking number on another claim.
21 So, in essence, if you think about it, the blocking number
22 is -- is telling us proof of ownership, and that's sort of
23 what we think of it as.

24 So, if -- if a blocking number -- if -- if we get
25 a claim with a blocking number that's duplicative of another

1 different claim with that same blocking number, we look at
2 it, and we -- we -- we -- we sort of think okay, this is
3 likely a duplicative claim, and what we did for every single
4 ISN is we looked at all of the blocked portions of that ISN,
5 totaled them up, you know, totaled the notional amounts. We
6 looked -- we looked at all that and made sure that there --
7 there wasn't duplicative amounts. Is that helpful?

8 THE COURT: How did you make sure? What -- what
9 did you actually do?

10 MS. CLACK: Well, we -- so the blocking numbers
11 were issued by the clearing agencies. The clearing agencies
12 reported to us everything, all of the blocking numbers, the
13 notional amounts, the dates, the ISNs for which they issued
14 blocking numbers.

15 We took that information and then, looked at that
16 by ISN, compared that to Lehman's books and records and the
17 outstanding amounts, and obviously, there were
18 reconciliation issues where -- or, in some instances, there
19 were -- there were claimant questions or claimant disputes,
20 and that was actually part of the reason and the process for
21 -- for the procedure that we -- that we outlayed with the
22 notices of proposed allowed claim amount because, on those
23 notices, we detailed exactly what was on the claim by ISN,
24 by blocking number.

25 So it's -- it's complicated, because there are so

1 many different levels. You know, you have a lot of claims,
2 and the claims have different ISNs, and then, the ISNs may
3 have different blocked amounts, but we have all of that
4 detail, and all of it was provided to the claimants in their
5 notices of proposed allowed -- proposed allowed claim
6 amounts.

7 THE COURT: Okay.

8 Now, in the case of the particular creditors
9 represented by Mr. Naber, I gather that they fall into two
10 categories.

11 MS. CLACK: Uh-huh.

12 THE COURT: Category one -- individuals resident
13 of -- in Germany that did not obtain blocking numbers.
14 Category two -- individuals resident in Germany who,
15 subsequent to the bar date, submitted claims that included
16 blocking numbers that are duplicative of claims filed by
17 financial institutions, perhaps on their behalf.

18 MS. CLACK: That's correct.

19 THE COURT: Okay.

20 In the case of category one, the no-blocking
21 number, how do you go about determining whether or not any
22 institution actually filed a claim with respect to that
23 security or that any other individual or entity may have
24 filed a claim with respect to that security?

25 MS. CLACK: Okay. So what we would do is we would

1 look at the claim which did not have a blocking number.
2 Let's just say that that claim was for 10,000 notional,
3 okay, of a particular ISN. We would then look at all of the
4 other claims for that ISN and, in particular, the claims
5 that had legitimate blocking number -- valid blocking
6 numbers for 10,000 or more notional, and we would look at
7 that and say well, okay, if that is indeed the case, then
8 it's possible that this claim for 10,000 notional of X ISN
9 could be included on these 25 claims with greater than
10 10,000 notional. Do you understand?

11 So then, we would -- as we've done with some
12 claimants, we would say these -- there are a number of other
13 claims that this particular claim ISN could be on. Can you
14 tell us -- can you -- can you affirm to us that that is not
15 the case, and, in this instance, there has been no
16 confirmation that the claims with no blocking numbers are
17 not on any of the other claims that they could potentially
18 be on.

19 THE COURT: Is it practical to continue attempting
20 to determine whether these claims are duplicative or not, or
21 have you exhausted at this point, essentially, all of the
22 diligence associated with the pending questions?

23 MS. CLACK: Well, Your Honor, there's nothing more
24 that we can do, because we can't tell if -- you know, if a
25 claim is -- is duplicative, necessarily, of some -- of some

1 other claims. We can -- all we can do is we can say well,
2 there's a high likelihood that it is on another claim, and
3 that's -- that's where we need the help from the claimants.

4 THE COURT: What can the claimant do?

5 MS. CLACK: Well, the -- the claimant can do a
6 number of things, and we have had claimants work with us in
7 this regard. The claimant can affirm that it is not on
8 another claim. Give us positive confirmation. The claimant
9 can tell us that they have not received a payment, because
10 already two payments have been made.

11 THE COURT: Now, you're saying a claimant that has
12 not received a payment from any source, including by pass-
13 through from a financial institution like Citi Bank or
14 Commerzbank, is that what you're saying? Or you're saying a
15 direct distribution from the debtor?

16 MS. CLACK: Either. Either. Right. So we -- we
17 would like positive confirmation from the claimant that they
18 have not received a distribution, either directly from LBHI
19 or from their representative bank or institution -- you
20 know, a pass-through, as you call it.

21 THE COURT: Now, if they haven't received a
22 distribution from any source, including, just by way of
23 example, Citi Bank and Commerzbank, that could also mean
24 that Citi Bank and Commerzbank failed to do something that
25 should have been done. It doesn't necessarily mean that

1 there's a right to (indiscernible - 54:05) from the estate.

2 MS. CLACK: That's true. That's true, but so,
3 again, going -- going back to, you know, we need
4 confirmation, and -- and generally, we've asked for
5 certification from the claimants that, to the extent that
6 they're aware, their claim has not been filed by anybody
7 else, i.e., their -- you know, their banker or broker, and
8 then, you know, in addition, that they have not received
9 payment. So -- so whether or not, you know, the bank acting
10 on their behalf has done what they -- they are supposed to
11 do, we would want certification that they have knowledge
12 that the bank has not submitted a claim on their behalf or
13 that anybody -- you know, nobody has submitted a claim on
14 their behalf.

15 THE COURT: How would the holder of a particular
16 claim based upon a particular ISN be able to prove an
17 entitlement to payment that has not been made from a
18 particular bank. Let's use Citi Bank again as simply an
19 example of a particular bank that has not made payment.

20 MS. CLACK: Uh-huh.

21 THE COURT: In other words, how does the holder of
22 a particular claim based upon the holdings in question of
23 Lehman program securities prove to a financial institution
24 an entitlement to receive payment?

25 MS. CLACK: Well, I -- I would imagine they would

1 have statements from that institution if they purchased the
2 -- you know, the securities from the institution. So that's
3 another -- another way we have gotten comfortable with some
4 claimants, and these tend to be individual claimants. They
5 will provide us statements showing --

6 THE COURT: Well, one of the problems here -- and
7 I recall this at the time that they blocking number was
8 first identified as a way to deal with these securities
9 mostly sold in Europe -- was that the blocking number would
10 protect against the risk of transfer by one holder to
11 another of the subject security, since there was no central
12 registrar that kept a list of holders.

13 MS. CLACK: Uh-huh.

14 THE COURT: So, even if someone had a confirmation
15 of purchase of a security in 2007, for example, that doesn't
16 necessarily confirm that that individual continues to be the
17 holder of that security; isn't that true?

18 MS. CLACK: That's true. However, generally a
19 holder of a security will receive a statement, a monthly
20 statement from the institution for which it purchased
21 showing its current holdings or, you know, and the value at
22 -- at a particular point in time.

23 THE COURT: That assumes -- and we're getting well
24 beyond the scope of my original question. That assumes that
25 there's a continuity of customer status, doesn't it?

1 MS. CLACK: Yeah, it does.

2 THE COURT: Okay. Thank you.

3 MS. CLACK: Thank you.

4 THE COURT: Before you leave the podium,
5 Mr. Naber, do you have any questions for Ms. Clack?

6 MR. NABER: I do not, Your Honor. Thank you.

7 THE COURT: Okay.

8 MS. CLACK: Thank you.

9 THE COURT: All right.

10 I actually have a number of people who have come
11 into the courtroom who are here for an 11:00 a.m. calendar
12 in a different case, and, with apologies to them, I'm going
13 to continue for a few more minutes to -- to deal with this
14 pending matter.

15 Does counsel for Lehman have any response to all
16 this or anything to add with regard to the subject?

17 MR. KASENETZ: Yes, Your Honor, and -- and I'll be
18 brief, but there are just a few issues I wanted to raise
19 with all of these questions that have been asked.

20 Your Honor, we -- we have been working -- the
21 debtors have been working with Mr. Naber and his claimants
22 for a year-and-a-half now. We have heard many statements
23 along the lines of we need to confirm with the banks, we
24 need to confirm with the banks, and -- and we need -- we
25 need confirmation from the banks. We haven't seen any

1 progress over the last year-and-a-half for any of these
2 claims, other than Mr. Naber providing blocking numbers that
3 were duplicative of the very same banks that the debtors
4 believe are duplicative. So, while it would be easy to say
5 let's go back and spend more time trying to reconcile these
6 claims, I -- I fear that it would be futile at this point,
7 because there really hasn't been any progress over the last
8 year-and-a-half.

9 Additionally, with respect to -- I believe
10 Mr. Naber raised a question -- well, the debtors need to --
11 or can the debtors get the confirmation from the banks about
12 duplication. Quite frankly, there are disclosure issues
13 that the banks have in terms of disclosing the names of
14 their customers, but, if these claimants are the beneficial
15 holders, if they are, in fact, the customers of the banks,
16 they should be able to get confirmation from the banks
17 themselves. They should be able to walk into a branch or
18 call their bank nationally and say I am your customer,
19 please give me confirmation that you are filing for my
20 claim.

21 So we've really reached the point where there is
22 not much left that the debtors can do or what seems like the
23 claimants can do to reconcile these issues, and -- and --
24 and I do have one more point, very brief. That, in terms of
25 how does this prejudice the debtors moving forward,

1 Your Honor, the -- the dollar amounts -- they're not high
2 compared to what some other claims that we've -- that
3 certainly you've seen throughout these cases, but this will
4 require more manpower from the debtors, more time, and more
5 administrative efforts to reconcile claims where, quite
6 frankly, the debtors have concluded are already covered by
7 other validly filed claims. So there is some prejudice to
8 the debtors in that this will require more effort, time, and
9 expense that has already been -- been brought to whatever
10 can be done for the last year-and-a-half, and so, that's all
11 I have, Your Honor.

12 THE COURT: All right.

13 Mr. Naber, do you have anything more to add?

14 MR. NABER: Not really, Your Honor. You know,
15 we're -- we're kind of at the end of our wisdom (ph), I
16 think, both of us, but we have been working to eliminate
17 some of those claims.

18 I believe when -- when omnibus objection ninety-
19 two came into being, there were over 80, and we're now down
20 to 55. So -- so things have moved, and, at this point, I
21 think neither one of -- it may be the Court's decision,
22 because no one knows, you know, (indiscernible - 1:02:03).
23 So the two options we -- we want -- can see is we either
24 (indiscernible - 1:02:09) one way or another, or we put the
25 -- the names (ph) on the spot (ph) saying we object to -- or

1 we allow an objection to their claim for the same amount,
2 and -- and people can (ph) proof or documentation. So
3 those, I think, are the two options we have today, and --
4 and -- but thank you. I'll be happy to hear the decision.

5 THE COURT: Well, I'm not sure if you're going to
6 be happy with what I'm about to say right now.

7 This has been pending for quite a while, and I am
8 personally very familiar with the proof of claim procedures
9 that were adopted in these cases and, in particular, the
10 component that required a blocking number to be obtained in
11 connection with claims arising out of Lehman program
12 securities. This is probably as close as you get to a truly
13 unique claim in any bankruptcy case, because the securities
14 in question are freely transferable, do not involve a
15 central registrar or trustee to maintain records, and the
16 blocking number was devised as a way to protect against the
17 very risk that we're now discussing on the record today.
18 That risk being of multiple payments in connection with the
19 same ISN number.

20 One of the problems presented here is that there
21 is no identified procedure to indemnify the estate from the
22 risk associated with double payment, and I rather suspect
23 that none of Mr. Naber's clients are prepared to provide
24 such indemnity, nor am I aware of any financial institution
25 that's prepared to provide such indemnity, and so, while the

1 amounts may not be great, the risk to the estate is such
2 that should there be a payment made to one of these
3 claimants in his or her individual capacity and, in fact,
4 that represents a double payment with respect to a
5 distribution that passed through a financial institution
6 that was acting in a representative capacity for those
7 claimants and others similarly situated with respect to the
8 subject securities, there is no practical remedy.

9 Additionally, there is the risk that in making
10 double payment with respect to a particular claimant, even
11 though the amount and the context of these cases is
12 relatively small, there is a notional impact upon the
13 creditors generally. It's de minimis in the case of some of
14 these individual holders, but if the risk is spread to a
15 broader class, it may become, if not material -- material,
16 at least notable.

17 So, in part because I believe that the bar date
18 requirement for obtaining blocking numbers was clear and
19 explicit and followed by substantially all of the holders of
20 Lehman program securities in the marketplace, including
21 individuals who are resident of Germany, the group we're now
22 talking about is the exception, not the rule. We've been
23 fully patient in dealing with this particular category of
24 claimants, and, at this juncture and particularly, based
25 upon some of the statements made by Ms. Clack concerning the

1 administrative burdens associated with trying to track this
2 down to some kind of final answer, I believe that the
3 ninety-second omnibus objection and the supplement to the
4 ninety-second omnibus objection should be granted.

5 In saying this, however, I note that there is
6 precedent from this morning's hearing that, if it can
7 actually be shown in the context of ongoing dealings with
8 the financial institutions in question that the individuals
9 have been prejudiced by this result, it would be without
10 prejudice to Mr. Nabers (sic) filing some kind of subsequent
11 motion seeking relief for cause shown on behalf of
12 individual clients adversely impacted by this decision. In
13 saying this, I do not by any means invite such motion
14 practice, nor do I give any indication as to how I might
15 rule with respect to such a motion. It would be based upon
16 the facts presented, and I will entertain an appropriate
17 order.

18 We will adjourn for five minutes so that those
19 individuals who are in court for the 11:00 a.m. hearing can
20 submit their appearances, and I'll come back at 11:15.

21 MR. KASENETZ: Thank you, Your Honor.

22 MR. NABER: Thank you, Your Honor.

23 (Proceeding concluded at 1:08 p.m.)
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I N D E X

RULINGS

	Page	Line
Debtors Three Hundred Sixty-Second Omnibus Objection to Claim	9	24
Merits Hearing with Respect to Proofs of Claim Numbers 55396, 41225, and 60352	16	5
Ninety-Second Omnibus Objection to Claims and Supplement to the Ninety-Second Omnibus Objection to Claims	49	3

C E R T I F I C A T I O N

I, Nicole Yawn, certify that the foregoing transcript is a true and accurate record of the proceedings.

Nicole
Yawn

Digitally signed by Nicole Yawn
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Date: November 27, 2012